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CAN SOCIALISM BE INTRODUCED UNDER THE INDIAN CONSTITUTION BY AMENDMENT UNDER ARTICLE 368?

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The fundamental law of the nation is its constitution, from which flow various rights and liabilities (fundamental rights and obligations) to the individual in his relationship with his family, the State and Society. It is the constitution, according to Mr. Stone in 'Law and Administration', page 130, of the State, which acts as a check on the arbitrary and oppressive exercise of Governmental power, which cannot be hastily set aside or overturned, and which cannot be affected by the clamour or action of mere temporary majorities. Thus the Rule of Law is safeguarded by the Constitution and in the words of Prof. Lasky in 'Modern Theories of Law', page 54: "The Rule of Law, if it is to be effectively binding alike upon the Governors and their subjects, must give unmistakable indications of the influences for Legislative action that it contains. And there must be in the State some positive institution or institutions charged with the function of seeing to it that these influences determine the character of the legislation. This institution may, as in the United States be a Supreme Court, or as in Great Britain, the King in Parliament."

Mr. Lasky also says that what binds the State and contributes to the good life of the State (can you say, making it a welfare State?) is the yearning for social solidarity which is in essence, the Rule of Law or respect for individual liberty and freedom, and he draws pointed attention to this fact in the following words: "From the Rule of Law, in a word, there is imposed on the State the obligation to assume to each and all its citizens the means to enable them to contribute all it is in them to give to the fullest realisation of social solidarity. It is because of this obligation that the State is entitled to use force for the achievements of its end. For all the matter that is essential for the purpose, there should be *constitutional guarantees* in the ultimate framework of the State. In such an attitude we have all the materials for a full theory of the State. Experience is to suggest in terms of social solidarity a rule of right conduct, and the aim of the State is its realisation. The State clearly is bound by the rule, that is to say, bound by law, for by the very definition, *it is an instrument and not an end.*"

The origin of the Rule of Law, whether in written or unwritten constitutions, is based on certain fundamental or basic propositions founded on certain natural rights inviolable and inviolate, and which have emerged in the process of the evolution of the human being due to the development of culture and refinement. The origin of the ideas of individual liberty, freedom and private property, are all milestones on the way from savagery to civilisation, which are recognised as healthy signs of the development of individual character and morality and thus contributing to the growth of a well-ordered society in the interests of social solidarity mentioned by Mr. Lasky. Each individual understands and recognises the others' rights, and in this way there is smooth movement of free thought and expression, and healthy action in free co-operative endeavour based on individual volition.

In the case of unwritten constitutions of the British Parliamentary type, these basic rights of freedom and liberty are protected by the ordinary law of the land,

comprised of judicial pronouncements based on custom, usages, conventions and legislations, which together constitute what is called the Rule of Law. In the words of Prof. Dicey, "the Rule of Law as distinct from arbitrary power, assures equal protection of all laws to the individual, and enables all his liberties and freedoms to be protected. In England, even assuming the supremacy of Parliament over every other organ of Government, it has been the recognised practice not to unsettle well-recognised principles of individual liberty and freedom, by Parliamentary legislation. In connection with this subject, one commentator says, that the prerogative right of the King to defend and seek the assistance of his subjects to defend the country, cannot be taken away by an Act of Parliament, and that an Act of Parliament made against natural equity and justice as to make a man judge in his own cause, is void in itself." But though this maxim is technically wrong, and has not been applied in common law as they will be contrary to the sovereignty of Parliament, yet, this rule has been applied partially by the courts, by raising a presumption in favour of the King and his subjects namely, that ordinarily Parliament would not have intended to take them away unless by express words of the statute or by necessary implication.

This subject is well illustrated in the cases in England, which decided that the King is bound by an Act of Parliament which lays down basic principles of freedom and liberty to the individual, even though the King be not named in it, and even though ordinarily the Crown is not bound by an Act of Parliament in the absence of express words or necessary implication.

In *The case of Ecclesiastical Persons*[1] it was laid down thus : "In divers cases, the King is bound by an Act of Parliament, although he be not named in it, nor bound by by express words. And therefore, all statutes which are made to suppress wrong, or to take away fraud, or to prevent the decay of religion, shall bind the King, although he be not named : for religion, justice, and truth are the true supporters of the crowns and diadems of Kings. And therefore, it is agreed in 35 H.6·60 that the King shall be bound by the Statute of Westminister, 2 Cap. 5 which makes provision against torturous usurpation, although the King is not named in the Act." Sir John Simon vehemently challenges the correctness of this observation in *Cayzer, Irvine Company, Ltd.* v. *Board of Trade*[2], but the rule has been consistently followed in later cases before courts of highest authority whatever might have been its origin. It orginated as an observation in the *Magdalen Case*[3] and it is even now considered good law. Kerr and Lawson in "Cases in Constitutional Laws", commenting on these above cases observe thus: "The Judges who decided these cases upholding the liberties of the subject have been thinking of an ideal constitution comprising these fundamental rights of common law which are so vital to the liberties of the subject and proper and efficient government of the country. These rules cannot be repealed but by statutes of direct and unequivocal statement, that is, that unless an Act of Parliament, unequivocally, by express words or necessary implication, take these rights away, all Acts of Parliament will be applied only subject to them. These rules form, and are termed as implied terms of the statute, though they do not override them."

In England certain outstanding rights are recognised: 1. Construction of statutes in favour of awarding legal right to the subject, to compensation for property acquired by the State, unless taken away by express words or necessary implication, *i.e.*, the burden of proof is on the State to establish a case for expropriation of property without compensation. See *Central Control Board* v. *Cannon Brewery*[4] and *Attorney General* v. *De Keyser's Royal Hotel.*[5] 2. Strict construction of statutes depriving the liberty of the subject *R.* v. *Halliday.*[6] 3. The protection of courts should be ordinarily extended to the subjects of the State unless statute denies it, *Chester* v. *Bateson*[7]. 4. Strict construction of penal statutes. 5. Positive and

1. (1601) 5 Co. Rep. 14-a.
2. (1927) 1 K.B. 269.
3. (1615) 11 Co. Rep. 66o.
4. (1919) A.C. 752.
5. 1920 A.C. 508.
6. (1889) 9 Crim. 428, 465.
7. (1920) 6 Const. L. 384, 450, 533.

clear enactments of Parliament alone can take away the jurisdiction of the supreme Courts of England and Scotland. 6. Courts have the right of pronouncing on the validity of subordinate legislation, whether they are *ultra vires*. (*Newcastle Breweries* v. *King*[1], though an Act of Parliament cannot be so subjected.)

In England, there is no question of suspending these fundamental rights as in America, where they can be suspended by the suspension of the constitution, but it is very doubtful if these rights can be destroyed or annulled altogether, both in England and in America, as they form unwritten laws of every constitution, whether codified or not. In a written constitution, these fundamental rights are enumerated and placed beyond the constituent power of majorities by convention though not by theory, in order that they should be stable, and not swayed as remarked by Stone, by temporary action of majorities inspired by different ideologies. These rights are the 'magna-carta' of the minority and they assure (*a*) fearless exercise of franchise at elections. (*b*) Freedom for the views of the opposition. Otherwise the successful majority might usurp the liberty of the minority by the exercise of the constituent power soon after it has become successful in an election in a spirit of political or communal revenge. In other words, it is a convention well recognised both in England and in America, that the supremacy of Parliament or the constituent power in a Republic will not affect, or would not be used in order to affect, the fundamental rights. The prerogative right of the King in Parliament to abridge the liberties of his subjects, may be there in strict legal theory, but it has been presumed in such cases, that Parliament has itself laid down the limits to, and thereby curtailed, the exercise of its prerogative. (*Attorney General* v. *De Keyser's Royal Hotel*[2]). One can call it as a constitutional estoppel.

In the same way, the constitution in America by enacting the 'Due Process of Law' clause, and especially by calling them as fundamental rights, has declared that it has set its limits on its constituent power, so far as those rights are concerned, that is, by estoppel raised by convention or public opinion. *Vide* 'The Government of the United States' by Munroe. These rights are therefore fundamental in the sense, that they are above party politics, and so beyond constitutent power, and not merely legislative power, in actual practice, though not in strict legal theory. *Vide* 'Eminent Domain' by Nichols, who says, that they are really limitations and not merely powers conferred by the Constitution. In Canada under clauses 56 and 90 of the Federation Act, the Federal Power of Disallowance, enables Acts of provincial legislatures to be disallowed by the Governor-General in Council on the following grounds : (1) because the provincial Act in question is an abuse of power and contrary to sound principles of legislation as, *e.g.*, amounting to spoliation or violation of property and vested rights under contracts or otherwise ; (2) because it is *ultra vire* and therefore invalid ; (3) because it conflicts with imperial interests or imperial policy ; (4) because it conflicts with Dominion policy or interests.

These are safeguards in the Constitution against violation of fundamental rights. Article 11 of the Japanese Constitution enacts, that fundamental rights are eternal and inviolable, and Article 5 of the American Federal Constitution enacts that no amendments shall be made depriving States, without its consent, of its equal suffrage in the Senate. The American Supreme Court has also laid down valuable judgments in construing the 'due process of law' clause in favour of the subject. As we have already remarked, that while in England these rights are permanently secured by Courts inferring the existence of such rights in all statutes in favour of subjects, unless expressly taken away by words or by necessary implication, in other countries governed by written constitutions, these rights are secured by written declarations, it being taken for granted, by all these countries alike, that the Constitution shall by convention retain these rights unrestrained by amendments effected by the exercise of constituent power. The analogy of the conven-

1. (1920) 1 K.B. 854. 2. 1920 A.C. 508.

tion in the British Parliament of not initiating any legislation of a constituent nature without the consent of Dominion Parliaments, is a matter worth remembering in this connection, as a *fundamental liberty of the States* though legally under the dominion of the British Parliaments. Such a convention must be extended also in the case of the *liberties of the subjects* when protected by fundamental rights secured by constitutional provision.

Now we shall enter into the study of the Indian Constitution with regard to the provisions laid down in this Constitution in respect of these fundamental rights and analyse them. Though the Indian Constitution in the Centre is republican in character and is governed by written declarations of the Constitution, the provincial Government is more of the model of British Parliament ensuring the Rule of Law. Inasmuch as a suspension of the Federal Constitution under Articles 352 to 359 might result in the suspension of fundamental rights, it cannot be presumed that the provincial Legislatures completely are not ruled by the Rule of Law as in British Parliament, especially when the subjects of agriculture and land, etc., are provincial subjects.

India was not a free country in any sense of the term before the Independence Act of 1947, and it was neither sovereign nor democratic, nor a Republic, before the resolution of the Constituent Assembly which enacted the characteristics of the Constitution, and also certain fundamental rights or declarations of certain rights which should govern their self-government, and according to which they have to adopt the Indian Constitution. These fundamental declarations of the character of the Indian Government, were to be copied in the enacting part of the Constitution, and these declarations of rights were embodied in the preamble, which legally is outside " this Constitution," and which by Article 368, the amending Article, applicable only to " this Constitution", *i.e.*, enacting part, is also outside the scope of amendability. These fundamental rights of justice, equality, fraternity, etc., in all spheres of activities, economic, social, political, etc., are to be the charactersitics of the Sovereign Democratic Republic, and being outside the scope of the Constitution, cannot be suspended by emergency Articles 352 to 359 of the Constitution in a permanent form, though for administrative purposes the President can temporarily rule the State as a unitary form of Government for an emergency. The Fundamental Rights Parts III and IV, are only deductions from the logic contained in the preamble, and intended to secure these rights, and therefore whatever amendment may be made to " this Constitution " can only be in conformity with the preamble containing declarations of rights. As Maxwell, in his "Interpretation of Statutes", says, "it has been sometimes said that preamble may extend but cannot restrain the enacting part of the statute. But it would seem difficult to support the proposition. The function of the preamble is to explain what is ambiguous in the instrument, and it may either restrain or expand it as best suits the intention." He also says that it is the preamble's function to keep the effect of the Act within its real scope. Refer *Kannammal* v. *Kanakasabai*[1], *Secretary of State for India in Council* v. *Maharajah* v. *Bobbili*[2], *Oudh Case* in ' Construction and Interpretation of Statutes ' by P. Narasimham.

Thus it would appear that Democracy, as distinct from Socialism of the Soviet pattern, is a distinct character of the Indian Constitution which has been secured permanently free from the amending power, and the freedoms of democratic life are secured by the fundamental rights under Part III considered along with Part IV, without prejudice to Part III (individual liberty restricted in operation by social obligations), and at the maximum, these rights can only be suspended for an emergency by the President under Articles 352 to 359, thus leaving the question of their permanency unquestioned and unchallenged.

In the First Amendment case (to our Constitution) *Shankari Prasad* v. *Union of India*[3], Chief Justice Patanjali Sastri, (puisne Judge as he then was), of the Supreme

1. (1930) I.L.R. 54 Mad. 845 : 61 M.L.J. 535.
2. (1919) 37 M.L.J. 724 : L.R. 46 I.A. 302 : I.L.R. 43 Mad. 529 (P.C.).
3. (1951) 2 M.L.J. 683 (S.C.).

Court, observes: "The terms of Article 368 are perfectly general and empower Parliament to amend the Constitution without any exception whatever. In the context of Article 13

"law must be taken to mean the rules or regulations made in the exercise of ordinary legislative power and not amendments to the Constitution made in the exercise of Constituent power, with the result that Articles 13 (2) does not affect amendments made under Article 368."

Two or three observations may be made in appreciating the judgment. One is, the general power of amendment under Article 368 can relate only to "this Constitution", a fact which I am afraid has been overlooked. And so what the learned Chief Justice must be deemed to mean is, that the amending power relates only to the enacting part of the Constitution, and not to the Constitution as a whole including the preamble. In other words, the preamble containing the declaration of rights is left untouched, and the amendment made to the Constitution must necessarily adopt the policy mentioned in the preamble, *i.e.*, Democracy with social and economic justice and equality, or in other words, called as Democratic Socialism as distinct from complete Socialism. In other words, the preamble can restrict the scope of the statute in the same way as it is the duty of the enacting part to adopt the principles enunciated in the preamble. I am afraid that this aspect of the question has also been overlooked.

Secondly, the amendment of the fundamental rights, Articles 31-A and 31-B are not to be construed as amendments to the principle of the right of private property *in all cases*, but these amendments which are intended to implement the Congress resolutions, and so must be deemed to be part of the fundamental rights from their inception, are intended only to apply to the special case of zamindary or impartible estates which concentrate wealth permanently in a few hands to the detriment of the livelihood of the poor, *vide* observations of Patanjali Sastri, C.J., in 1952 S.C.J. 354. To stretch the logic of these amendments to other cases of private property, hereafter, would mean that the Indian Constitution is an absent-minded juristic person, who now and then forgets to carry out its original intentions of what it meant by the term fundamental rights and proceeds to vary its principles from time to time. Once the Constitution has exercised its abridgement of the scope of fundamental rights, and thereby clearly enunciated that all other forms of private property are governed by fundamental rights, there is a clear estoppel raised that it shall not proceed on further limitation of rights granted to the people of India. The judgment of the Supreme Court in *Bihar Zamindari Case*[1] should not therefore be taken to allow further amendments of these fundamental rights with a view to an initiation of a long and continued programme of social reform depriving all persons of private property, which will mean, that the Supreme Court has decided in favour of amending the Constitution in such a way as to repeal the fundamental rights as well as the Constitution, and enacting a different Constitution governed by a different ideology in its stead. As already mentioned, it is also wholly improper to set up the precedent of amending in such a way as to open the door for the destruction of the valuable rights for which the Constitution stands. The principle of English law governed by Parliamentary practice, to read implied declarations of fundamental rights in statutes, as well as the American precedents of refraining by convention from seeking the constituent power in such cases, must be remembered in this connection, and opportunity must be given for judicial pronouncements restricting or enlarging these rights as time goes on. "If the Constitution is rigid, flexibility must be supplied from the mind of the Judges" says (Bryce in "Studies in History and Jurisprudence".

Weaver in his "Constitutional Law", pages 108 to 110, says, that the permanence and indestructibility of all the Federations must be implied from the following case *Matus* v. *Hunter*[2] (evidenced by the preamble of the American Constitution) *see* 2 Dall. 419: 1 Law.Ed. 440: 118 M.E. 544: 107 A.T.L. 673: 5 A.L.R. 1412. He says the Constitution cannot be nullified as a whole or in part by an ordinary Act of the Congress, and any Act repugnant to the Constitution is void.

1. 1952 S.C.R. 889 : 1952 S.C.J. 354 (S.C.). 2. 1 Wheat. 304 : 4 Law. Ed. 47.

Chief Justice Marshal's dictum, "It is a proposition too plain to be contested that the Constitution controls any legislative Act repugnant to it may be referred to." In regard to Amendment (19th Amendment) see *Lesser* v. *Garnett*[1], *Bay* v. *United States*[2], *Dillon* v. *Glass*[3]. Weaver says in page 251, "that the Constitution cannot pass a law curtailing our independence as a nation *or altering the form of our Government*."

Thus even in America according to Weaver and Willoughby, there is a presumption (sometimes questioned) of an inherent prohibition against amendments destroying the character of the Constitution. Though in strict theory, amendments may be revolutionary, such an Act is not recognized as normal and healthy constitutional practice. The Constitution enacted by the entire people in a Constituent Assembly cannot in fairness be so amended as to be essentially altered in character by a section of the people though they are in a majority.

The following propositions must therefore be categorically emphasised in the interest of the permanency of the Rule of Law in the Indian Republic :—

1. The vindication of the supremacy of the Rule of Law is the unquestioned privilege of the Supreme Court, and that as in America, in Canada and in England, the rule must be interpreted as far as possible in favour of the subject, and that all necessary inferences as to the existence of the fundamental rights must be presumed in favour of the subject, unless the Constitution clearly in unequivocal words says, that such rights are taken away by its constituent power. The word 'Law' is too generic a term to be cut down to the meaning of 'Legislative Power' and where there is ambiguity in the construction of the term, the benefit of the doubt must go in favour of the subject as in England and in America, where the word 'Contract' was said to include the word 'Corporations' (Justice Marshal's Judgment in the famous *Dartmouth Case*).

The American 'due process of law' secures permanence of property rights to them, and it is regrettable that this clause has been whittled down, and changed into 'procedure established by law' making these fundamental rights reduced from their important position as substantive rights, to one of procedural rights. In other words : 'You can do anything provided you stick to the form of procedure established by law' is not a happy inference, flowing from the logic of this phrase. Here again is an opportunity for the Supreme Court to establish valuable precedents in favour of the subject.

2. The burden of proof that the Articles of the Constitution deprive the subjects of property, unless it is taken away by clear words or by necessary implication, must be on the Government.

3. That the Constitution of India must be presumed to contain an inherent prohibition, for reasons mentioned above, against destroying fundamental rights and also for the following reasons :

(*a*) The preamble being outside the amending Article 368, and the Constitution being adapted to the preamble so as to suit it, makes the democratic character permanent.

(*b*) Absence of provision for destroying the fundamental rights, but only their suspension on an emergency under Articles 352 to 359, raises a strong presumption that the word 'law' mentioned in Article 13 is constituent law or power and not merely legislative law or power.

(*c*) Once an amendment has been made to the fundamental rights under Article 31 it is not open to the Constitution to further abridge these rights, as an estoppel or a self-abridgment of prerogative must be read in the case.

(*d*) The enumeration of 'fundamental rights' in the Constitution, and the statement, in essence, that no law shall restrict or override fundamental rights, mean that the 'fundamental law' from which these rights accrue, *i.e.*, 'the Consti-

1. 258 U.S. 130 : 66 Law.Ed. 505.
2. 279 U.S. 597 : 73 Law.Ed. 867.
3. 256 U.S. 365 : 65 Law.Ed. 994.

tution', assures the individual that it shall not exercise its sovereign powers by virtue of amendment, in the curtailment of such rights which have already curtailed sovereign prerogative. In other words, a constitutional estoppel or guarantee in the words of Professor Lasky, or shall we say a contract with every citizen of Free India that the constituent power will not be used except in furtherance of Parts III and IV which is subordinate to Part III, is implied.

As in America, the analogy of police power and the power of the State to regulate property affected with public interest, besides the law of public utility enterprises, will widen the scope of the exercise of sociological impact upon individual liberty without destroying it, and this will be effected gradually by judicial interpretation.

(e) It must be further pointed out that the ryotwari system has been introduced in all the lands which were previously governed by the Madras Estates Land Act by the enactment of the Zamindari Abolition Act under Articles 31-A and 31-B of the Constitution. The Estate Abolition Act confers full rights of ownership upon the tenants cultivating the lands, and therefore, it is a further estoppel on behalf of the Government by which they are precluded from going back on the new settlement, and trying to introduce any form of socialism by which private rights to property will be restricted or abolished.

(4) That as complete Socialism in India implies practically the total negation of the ideas of private property and the liberty of the individual, except as a mere tool or an instrument of the State, an amendment of the Constitution of such a nature will be virtually a repeal of the present Constitution, and enactment of a fresh one, which is called revisional legislation (*see* William Anderson on 'American Government'), for which there is no provision for representatives in the Legislatures including the Indian Parliament to act on behalf of the entire body of the 350 millions of the Indian community, and therefore any such departure from the present Constitution can be effected only on the resolution of a new Constituent Assembly appointed for the purpose.

Any law by which such an amendment of a drastic character could be justified as a constitutionally proper amendment, will, I am afraid, fall under the reproach of the famous Daniel in his words, hereunder quoted from the *Dartmouth Case.*

"By the law of the land, is most clearly intended the general law, a law, which hears before it condemns, which proceeds upon enquiry and records judgment only after trial, the meaning of this being that every citizen shall hold his life, liberty, property and immunities under protection of the general rules which govern society. Everything which passes under the form of an enactment is not therefore to be considered the law of the land. If this were so, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, *and acts directly transferring one man's estate to another*, would be the law of the land". —(Quoted in Baldwin's 'American Judiciary').

SUMMARY OF ENGLISH CASES.

R. *v.* PEARCE, (1952) 2 All.E.R. 718 (C.C.A.).

Criminal Law—Attempt to commit an offence—Sentence could not be higher than for the offence itself.

It is not right, if a man is convicted only of an attempt to commit an offence, although technically he may be liable to a term of imprisonment at the discretion of the Court, that he should be given a longer sentence, for the attempt than he could have been given if he had committed the full offence.

If for the full offence Parliament has laid down a definite sentence, it is wrong, if a defendant is convicted of an attempt, to give a longer sentence than could have been given for the substantive offence.

NEWSOM *v.* ROBERTSON (INSPECTOR OF TAXES), (1952) 2 All.E.R. 728 (C.A.).

Income-tax—Authorised deductions—Travelling expenses of barrister between home and chambers—If could be deducted—Circumstances—Wholly and exclusively—Meaning of.

A distinction must be drawn between living expenses and business expenses. In order to decide into which category to put the cost of travelling one must look to see what is the base from which the trade, profession, or occupation is carried on. In the case of a tradesman, the base of his trading operation is his shop. In the case of a barrister, it is his chambers. Once he goes to his chambers, the cost of travelling to the various courts is incurred wholly and exclusively for the purpose of his profession. But it is different with the cost of travelling from his home to his chambers and back. That is incurred because he lives at a distance from his base. It is incurred for the purposes of his living there and not for the purposes of his profession, or at any rate not wholly or exclusively, and this is so whether he has a choice in the matter or not. It is a living expense as distinct from a business expense.

Per *Romer, L.J.*—In order that the taxpayer's expenses of travelling to and fro should qualify for tax purposes as permissible deductions from his gross earnings as a barrister it must be shown that they were incurred wholly and exclusively for the purposes of his profession.

It cannot be said even of the morning journey to work that it is undertaken in order to enable the traveller to exercise his profession. It is undertaken for the purpose of neutralising the effect of his departure from his place of business, for private purposes, on the previous evening. In other words, the object of the journeys, both morning and evening, is not to enable a man to do his work, but to live away from it.

CIVIL AIR TRANSPORT INCORPORATED *v.* CENTRAL AIR TRANSPORT CORPORATION, (1952) 2 All.E.R. 733 (P.C.).

*International Law—Recognition of foreign government if could be retroactive in effect —*De jure *and* de facto *governments—Sale of property by a government since superseded by another—Validity of sale—When can be questioned.*

The paramount importance of the principle of continuity, *i.e.*, of a succeeding government accepting what has been done by its predecessor cannot be read as authorising a Court to treat as a nullity political decisions and actions of a former government which have resulted in the transfer of property to third parties. At the same time the possibility of Courts refusing, in a conceivable case, to recognise the validity of the disposal of State property by a government on the eve of its fall, *e.g.*, by a despot, who knows that previous recognition is just being withdrawn, where it is clear that his purpose was to abscond with the proceeds, or to make away with State assets for some private purpose, cannot be overruled.

Subsequent recognition *de jure* of a new government as the result of successful insurrection can, in certain cases, annul a sale of goods by a previous government. If the previous government sells goods which belong to it but are situated in territory effectively occupied at the time by insurgent forces acting on behalf of what is already a *de facto* new government, the sale may be valid if the insurgents are afterwards defeated and possession of the goods is regained by the old government. But if the old government never regains the goods and the *de facto* new government becomes recognised by Her Majesty's Government as the *de jure* government, purchasers from the old government will not be held in Her Majesty's Courts to have a good title after that recognition.

Primarily, at any rate, retroactivity of recognition operates to validate acts of a *de facto* government which has subsequently become the new *de jure* government, and not to invalidate acts of the previous *de jure* government.

It might be too wide a proposition to say that the retroactive effect of *de jure* recognition must in all cases be limited to acts done in territory of the government so recognised, for the case of a ship of the former government taken possession of by insurgents on the high seas and brought into a port which is under the control of the *de facto* government would have to be considered.